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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1320

SAM MILLARD,

Petitioner,

versus

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JOHN W. HARRELL,
Counsel for Petitioner;
P. M. FLANAGAN,
Of Counsel for Petitioner.

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versus *Petitioner,*

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable the Supreme Court of the United States:

Your petitioner, Sam Millard, respectfully shows:

I

Summary Statement of the Matters Involved

That he was convicted in the United States District Court for the Eastern District of Louisiana, New Orleans Division, on October 5, 1944, upon thirteen counts of a nineteen count information. Counts 1 to 11 inclusive charged the selling of tires without ration certificates in violation of Section 1315.801 of Ration Order I-A, as amended, and Section 2 (a) (5) of the Priorities and Allocations Act, as amended by the

Second War Powers Act; Counts 12 to 19 inclusive charged the sale of tires in excess of the maximum price in violation of Sections 4 (a) and 205 (b) of the Emergency Price Control Act of 1942, as amended, and Revised Price Schedule Number 63 (R. 2-24). However, paragraphs 1 and 2 of Count 1, which were referred to and incorporated in all subsequent counts, charged a violation of the following laws:

1. Priorities and Allocations Act approved June 28, 1940, Title 50, U. S. C. A. Appendix Sec. 1152, as amended by

2. Second War Powers Act of 1942, Title 50, U. S. C. A. Appendix Sec. 633;

3. War Production Board Directive No. 1, approved by President on January 24, 1942, 7 Fed. Reg. 562 (Vol. 7, No. 19);

4. War Production Board Supplementary Directive No. 1 (q) 7 Fed. Reg. 9121 (Vol. 7, No. 221);

5. Ration Order 1 A;

6. Emergency Price Control Act of 1942, Title 50, U. S. C. A. Appendix Secs. 901, et seq., and

7. Revised Price Schedule No. 63.

Petitioner was convicted on counts 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 17, 18 and 19 (R. 36).

Petitioner was sentenced to pay a fine of $200.00 on each of the above counts, and additionally imprisoned to one (1) year as to Counts 2 and 13; one (1) year as to Count 3; one (1) year as to Counts 4, 5, 6 and 7; one (1) year as to Counts 8, 9 and 10 and one (1) year as to Counts 17, 18 and 19 (R. 43-45). In other words, petitioner was sentenced to pay a fine of $2600.00 and to serve five (5) years for violations of a misdemeanor.

A demurrer was filed on September 23, 1944, to the information, setting forth that each and every count was bad for duplicity, and that each count did not state facts or grounds sufficient to constitute a crime against the United States. The third ground of the demurrer was abandoned (R. 25).

On the same date a motion to quash was filed stating as grounds that each and every count was bad for duplicity, and that each and every count of the information was vague, indefinite, and uncertain, and did not fully inform the defendant of the charges made against him; because in each count the allegations of fact necessary to constitute a crime were insufficient, uncertain, and ambiguous; and because each count was not sufficient in form or substance to plead the judgment in bar in another prosecution for the same offense (R. 26).

A motion for a bill of particulars was also filed (R. 27).

On the hearing of the demurred, motion to quash and bill of particulars, all were overruled except the Government was permitted to amend Counts 17, 18 and 19 and certain information was furnished in response to the bill of particulars (R. 29). Counts 17, 18 and 19 were amended to substitute the words "Maximum Price Regulation Number 528" for the words "Revised Price Schedule Number 63" (R. 30).

Immediately before the trial the Court refused to allow your petitioner to withdraw his plea of not guilty for the purpose of permitting the filing of a motion for a bill of particulars, a demurrer and a motion to quash the amended bill of information, which were based on the same grounds as the original motions.

A motion in arrest of judgment was filed on the grounds that the amended information did not state facts sufficient to constitute a crime against the United States; that the counts of the amended information were insufficient in

charging the commission of a criminal act in that the Second War Powers Act of 1942 and the Emergency Price Control Act of 1942, were unconstitutional, and that petitioner should have been allowed to withdraw his plea of not guilty for the purpose of filing a motion for a bill of particulars, a demurrer and a motion to quash the amended information (R. 40).

The motion in arrest of judgment was overruled by the trial Court and exception was duly taken (R. 43).

Thereafter, on the 11th day of October, 1944, petitioner gave notice of appeal under Rule 3 (R. 46) setting forth the grounds of appeal (R. 48), and thereafter filed his appeal bond (R. 49).

On March 29, 1945, the appellate court affirmed the judgment of the trial court (R. 64), pursuant to a written opinion, which is not yet reported (R. 60-64). Petition for rehearing was duly filed on April 17, 1945 (R. 65). Order denying petition for rehearing was entered by the Fifth Circuit Court of Appeals on May 4, 1945 (R. 68). Motion for stay of mandate was duly filed by petitioner on May 7, 1945, and order granting the same for a period of thirty days from May 4, 1945, was entered by the Circuit Court of Appeals on May 9, 1945.

The specifications of errors and points relied upon in the appeal from the trial Court to the Fifth Circuit Court of Appeals, and herein involved, are as follows:

1. *The overruling of the demurrer.*

2. *The overruling of the motion to quash.*

3. *The refusal to allow petitioner to withdraw plea of not guilty immediately before the trial for the purpose of permitting the filing of a motion for a bill of particulars, a demurrer and a motion to quash the amended bill of information.*

4. *The overruling of the motion in arrest of judgment, in which the constitutionality of the Second War Powers Act of 1942 and the Emergency Price Control Act of 1942 was attacked; and*

5. *The invalidity of the sentence.*

II

Reasons Relied On for the Allowance of the Writ

1. The decision of the Circuit Court of Appeals herein involves an important question of Federal Law which is in conflict with the decisions of this Court.

2. Such decision of the Circuit Court of Appeals is an untenable decision of an important question of Federal Law.

3. Such decision involves an important question of Federal Law which has not been specifically decided by this Court but should be so settled.

Petitioner presents to this Court, and files herewith as an exhibit hereto, a duly certified transcript of the entire record in the case, as the same appears in the Circuit Court of Appeals.

WHEREFORE, petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the proceedings of the said Circuit Court of Appeals had in the case numbered and entitled on its docket, No. 11,183, Sam Millard, Appellant, versus United States of America, Appellee, to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that

the judgment herein of said Circuit Court of Appeals be reversed by this Court, and for such further relief as to this Court may seem proper.

New Orleans, La., May —, 1945.

SAM MILLARD,
Petitioner,

By JOHN W. HARRELL,
of New Orleans,
Counsel for Petitioner;

P. M. FLANAGAN,
of New Orleans,
of Counsel for Petitioner.